

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

IN THE MATTER OF:)	RECOMMENDED
)	FINDINGS OF FACT,
Jacobson, Inc.)	CONCLUSIONS OF LAW,
Licensee of Blondie's)	AND ORDER
Located at Wishek)	
McIntosh County, North Dakota)	OAH File No. 20040361

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The licensee was served with a Complaint and Specification of Issues, and Notice of Hearing by certified mail as provided by N.D.C.C. ch. 5-02. The licensee served an Answer to Complaint and requested a hearing. The matter was heard on November 22, 2004, at the hour of 9:00 a.m., at the McIntosh County Courthouse, Ashley, North Dakota, before Allen C. Hoberg, administrative law judge ("ALJ"), Office of Administrative Hearings. The licensee was not represented by counsel but was represented at the hearing by its President, Lenora Jacobson, and its Vice-President, Mike Jacobson. The State was represented by Assistant Attorney General, Robert P. Bennett. The state and the licensee filed written closing argument on December 1, 2004.

NOW, THEREFORE, upon the evidence presented at the hearing, and the argument of the parties, the ALJ makes the following recommended findings of fact and conclusions of law:

FINDINGS OF FACT

On August 8, 2004, Jacobson, Inc. was the holder of a state alcoholic beverage license permitting the sale of alcoholic beverages at retail from the premises of Blondie's, located at Wishek, North Dakota.

On said date, agents or employees of the licensee, specifically its President and Vice President, who were present on the licensed premises at the time, permitted the consumption of alcoholic beverages on the licensed premises after 1:00 a.m. on a Sunday, likely at approximately 2:00 a.m.

Although the alcoholic beverages may have been dispensed by agents or employees of the licensee before 1:00 a.m., they were consumed after 1:00 a.m. on the licensed premises. Alcoholic beverages were consumed on the licensed premises at approximately 2:00 a.m. on Sunday by members of a band that had performed at the licensed premises that night. Band members admitted to consuming alcoholic beverages on the licensed premises after 1:00 a.m.

From the foregoing findings of fact, the ALJ arrives at the following:

CONCLUSIONS OF LAW

Jacobson's, Inc. is presently a licensed retailer of alcoholic beverages, operating under and by virtue of a state license to sell alcoholic beverages at retail, the license having been issued by the Attorney General pursuant to the provisions of N.D.C.C. ch. 5-02.

The evidence presented at the hearing shows, by the greater weight of the evidence, that agents or employees of the licensee permitted the consumption of alcoholic beverages on the licensed premises after 1:00 a.m. on a Sunday, in violation of N.D.C.C. § 5-02-05.

N.D.C.C. § 5-02-05 prohibits the dispensing of alcoholic beverages or permitting the consumption of alcoholic beverages on the licensed premises at specified times, including after 1:00 a.m. on a Sunday.¹ A licensee can dispense an alcoholic beverage before 1:00 a.m. and still

¹ Certain sales of alcoholic beverages are permitted on Sundays, either pursuant to a Sunday Alcoholic Beverage Permit or pursuant to an Events Permit, but Jacobson, Inc. was not the holder of either of these permits. *See* N.D.C.C. §§ 5-02-01.1 and 5-02-05.1. Even if it had been the holder of one of these permits, dispensing or permitting consumption could not take place on a Sunday between 1:00 a.m. and 12 noon.

violate N.D.C.C. § 5-02-05, if the licensee permits the consumption of that previously dispensed alcoholic beverage on the licensed premises after 1:00 a.m. The evidence in this matter clearly shows that agents or employees of the licensee were present on the premises while alcoholic beverages were being consumed after 1:00 a.m. by members of the band which performed at the licensed premises that night.

The Attorney General has the authority, under N.D.C.C. § 5-02-11, to suspend or revoke the licensee's license to sell alcoholic beverages at retail when the violation charged in the Complaint has been proved by the evidence presented at the hearing.

RECOMMENDED ORDER

THEREFORE, upon the foregoing findings of fact and conclusions of law, the ALJ recommends that the state retail alcoholic beverage license of Jacobson's, Inc. be suspended for a period of days, as determined by the Attorney General in accordance with policy, and as specified in the final Order.

Dated at Bismarck, North Dakota this 3rd day of December, 2004.

State of North Dakota
Wayne Stenehjem
ATTORNEY GENERAL

By: _____
Allen C. Hoberg
Administrative Law Judge
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